

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Acceleration of Broadband Deployment	)	WC Docket No. 11-59
Expanding the Reach and Reducing the Cost of	)	
Broadband Deployment by Improving Policies	)	
Regarding Public Rights-of-way and Wireless	)	
Facilities Siting	)	

**Comments of the City of Port St. Lucie, Florida**

These Comments are filed by the City of Port St. Lucie in response to the Notice of Inquiry ("NOI"), released April 7, 2011 in the above-entitled proceeding. Through these comments, the City seeks to provide the Commission with information regarding its right-of-way management practices and wireless facility sitings. The City also intends to communicate its position on federal regulation in these regards.

**I. Introduction**

The City of Port St. Lucie, located on the east coast of Florida within St. Lucie County, encompasses approximately 115 square miles. The 2010 Census placed the City's population at 164,603.

Port St. Lucie owns and maintains 1,878 miles of roadside rights-of-way that includes more than 1,500 miles of roadside drainage swales. In addition, the City maintains more than 100 miles of drainage rights-of-way that are part of the City's overall stormwater utility system. The City of Port St. Lucie is governed by Florida Statutes, Chapter 403, entitled "Florida Air and Water Pollution Control Act", which regulates water, sewer and stormwater treatment. There are many rules and regulations for the placement and separation of these facilities to ensure the health, safety and welfare of the citizens of the City of Port St. Lucie. If the City were to loose control over the placement of utilities for telecommunication and/or broadband purposes, this could jeopardize the health, safety and welfare of the citizens of Port

St. Lucie and cause violations of other rules and regulations. The City has developed considerable expertise in the management of its rights-of-way including, but not limited to, the administration of policies developed to protect and further public safety, prevent neighborhood flooding, and promote economic development.

Multiple utilities share the public road rights-of-way in order to provide their specific services to businesses and residents of the City. Those utilities include water, sanitary sewer, reclaimed water, electric, gas, cable television, telecommunications, and the City's own stormwater utility system and fiber-optic network. The City has allowed multiple utility facilities to be located in its rights-of-way and easements so that such facilities do not infringe on private property.

## **II. Rights-of-way and Wireless Facilities Siting Issues**

The City of Port St. Lucie strongly believes locating telecommunications facilities such as towers on specific City-owned parcels, or locating underground and above-ground facilities within City rights-of-way, must be balanced with the overall needs of the City and its business and residential property owners. The City further believes local governments are best able to achieve that balance. By contrast, many of the entities seeking access to the City's rights-of-way and other City-owned properties are market driven and would prefer to work without rules or regulations. That would be to the detriment of all other rights-of-way users, the abutting property owners, commuters, and Port St. Lucie as a whole.

The Commission requested comments concerning placement of telecommunication equipment on public facilities such as traffic signal and street light poles. Port St. Lucie's traffic signal, street light, and pedestrian light poles are designed and built solely for their intended use and are not designed to support other equipment such as telecommunications facilities. Wind loading and construction standards are issues in our part of southeast Florida where several tropical storms and hurricanes are likely to occur. The liability of potential severe weather related damage to telecommunication equipment owned by others, but attached to City-owned poles, has not been considered an acceptable risk for the City.

### **III. Timeliness and Ease of the Permitting Process**

Port St. Lucie strives to provide quality and timely service to the public with these regards. The offices of City Departments involved in these matters are staffed with highly trained planners, technicians and support personnel who are available to meet with the public during business hours. The City's Code of Ordinances, Comprehensive Plan, and a variety of maps related to land development and permitting are available on the City's website. Numerous permit applications, fee schedules, forms, and instructions are also posted on the website so that the public can access information after business hours or from remote locations. Website links to pertinent City departments include:

<http://www.cityofpsl.com/>

<http://www.cityofpsl.com/building/index.html>

<http://www.cityofpsl.com/engineering/index.html>

<http://www.cityofpsl.com/planning-zoning/planning-zoning-applications.html>

<http://www.cityofpsl.com/utility/utility-systems-department.html>

Excavation Permits: In accordance with the City's Code of Ordinances, utility contractors must obtain an Excavation Permit from the City Engineer prior to commencing working in the City's rights-of-way. Variations of this process have been in place since 1978. Permit applications and corresponding checklists of submittal requirements are available on City's website. There are no administrative charges or permit fees associated with Excavation Permits and they are typically issued within 15 days.

It has been the City's experience that persons who complain that the Excavation Permit process is lengthy or cumbersome are those that cannot follow instructions, submit applications without adequate information, do not understand land use or platting regulations, cannot read maps, or do not want to develop civil engineering based site excavation plans.

Port St. Lucie believes its Excavation Permit program protects the City's interests and that it is fairly administered to all utility companies. The Excavation Permit program provides an information base so that residents can make inquiries and comments to the City about work being performed in their neighborhoods. It also:

- Allows the City to exercise best management practices with regard to oversight in assuring mandatory separation is maintained for certain utility facilities
- Limits utility cuts in new streets
- Prevents pavement and sidewalk failures and trench and pit settlement due to improper compaction at utility cut locations
- Limits the liability of open pits or excavation sites being left unattended for long periods of time
- Ensures that the City's roadside swale drainage system is restored
- Protects against aboveground utility facilities being installed in manners that create site distance problems and/or block pedestrian access
- Helps prevent damage to critical City-owned infrastructure such as its 1,173 miles of potable water mains, 1,048 miles of sanitary sewer mains, and its 30-mile underground fiber-optic network.

Towers and Land Development: Entities desiring to install a telecommunications tower, regardless of location, must comply with the City's Comprehensive Plan and pertinent zoning and land use regulations applicable to any and all land development within the City. A variety of applications and forms related to development are found on the City's website along with existing land use designation maps and other helpful resources. Fees are associated with land applications development in accordance with the City's Code of Ordinances and the policies of affected City Departments. Tower site applications must be reviewed City's Planning and Zoning Board ("Board") that meets once each month. Recommendations for approval or denial are forwarded by the Board to the City's Council that meets at least three times a month.

The process includes formal public hearings during which neighboring property owners have the opportunity to express support or concerns for proposed tower sitings. As telecommunications towers have become more commonplace, the public hearings have brought forth far more objections than support. The "not in my back yard" battle cry has definitely prevailed among residential property owners in recent years. Consequently, the City of Port St. Lucie has conscientiously worked with telecommunication tower entities to help them find suitable locations. There are 22

telecommunications towers located in the City of Port St. Lucie. Seven of those 22 telecommunications towers are located on City-owned property. The City is currently in negotiations with two companies for the siting of an additional six towers on various City owned properties.

#### **IV. Reasonableness of Charges**

Franchise Agreements requiring the payment of fees currently exist between Port St. Lucie and the local electric power provider and natural gas provider. Revenue from franchise fees exceeds \$8.1 million annually. That revenue helps defray City costs associated with maintaining its previously described road and drainage rights-of-way and utility easements.

Franchise Agreements previously existed with the local primary land-line telecommunications provider and local cable television companies; however, those agreements were terminated when the City adopted a Communications Tax in accordance with Florida Statutes §202.20. The State of Florida collects and remits the taxes to the City. The current tax rate is 5.22% of the total monthly bill for any land-line or cellular communications service as well as to bills for cable and/or other television services. Revenues from the Communications Tax exceed \$5.9 million annually. Affected utility providers include, but are not limited to:

- AT&T
- Sprint
- Verizon
- Bellsouth
- Metro PCS
- Cingular
- T-Mobile
- Comcast
- Hometown Cable

The annual lease agreement revenue for towers located on City-owned property is approximately \$289,000. However, the City has ongoing battles with the tower entities because they claim confidentiality and will not divulge information regarding other entities co-located on the towers. Thus the City is not certain it collects all lease revenue it is due as language in the agreements allows the City to collect from co-located providers.

## **V. Local Policy Objectives**

As the City of Port St. Lucie manages its rights-of-way and other public properties, unlike the Commission, it is not focused on a single objective. The City's rights-of-way use and communications tower siting policies, fees, and regulations are part of its total plan and vision for the community. They; 1) ensure public safety; 2) assure proper restoration of public property; 3) are a critical component of proper location of all utility facilities; 4) help prevent rights-of-way use by other utilities from being blocked; 5) prevent major traffic disruptions; 6) satisfy aesthetic, environmental and historic preservation concerns; 7) help avoid damage to the property of others; 8) allow the City to obtain fair compensation for the use of public property; and 9) provide for the general welfare of the citizens of the City of Port St. Lucie through the administration of existing City codes, policies and procedures for the placement of facilities.

## **VI. Possible Commission Actions**

The City of Port St. Lucie strongly urges the Commission to refrain from attempting to regulate local rights-of-way management and telecommunication facility placement processes. The City's rights-of-way management experience has proven these are fact and location specific matters that require the expertise of local government familiar with traffic patterns, environmental conditions, economic development, and other community specific concerns. Imposing a federal regulatory regime would create unnecessary costs for this community. It would have the potential to completely undermine certain local land development policies and regulations. Likewise, regulation of fees and charges by the Commission could lead to a significant, if not catastrophic, loss of revenue essential to the City's ability to manage and adequately maintain its road and drainage rights-of-way.

If the Commission is compelled to act, it should be limited to; 1) the adoption and enforcement of regulations requiring transparency with regards to co-location; 2) voluntary programs and educational activities; and 3) implementing its own recommendation in the National Broadband Plan for working cooperatively with state and local governments; and 4) stressing to the telecommunication industry the

importance of being good tenants and good neighbors as they work in or operate in public-rights-of-way.

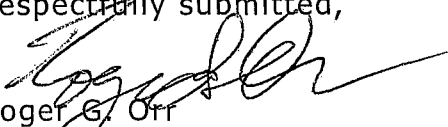
### **Conclusion**

The City of Port St. Lucie follows Florida Statutes §337.401, in regards to the use of right-of-way for utilities and those regulations provide sufficient protection to ensure the access to public rights-of-way for all utilities. Port St. Lucie believes its regulations and policies are administered fairly, without prejudice or discrimination. The City recently litigated with T-Mobile in federal court on the citing of a telecommunications tower and our rules, processes and procedures were upheld by the Court and the tower was not allowed.

There is no evidence that Port St. Lucie's policies or charges with respect to placement of utility facilities in public rights-of-way or on City-owned parcels have discouraged broadband deployment. Telecommunications companies have not cited the City's policies or fees as reasons they cannot or will not provide services. Therefore, Port St. Lucie strongly urges the Commission to conclude that rights-of-way and publically owned property management and any associated fees and charges are not impeding broadband deployment.

The Commission is also urged to conclude that broadband should not be given federal preference over any other public utilities in the use of rights-of-way or facility siting on publically owned property.

Respectfully submitted,

  
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